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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/785,438	02/20/2001	Richard A. Smith	20-433	5002

7590 07/11/2008
MANELLI DENISON & SELTER PLLC
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Washington, DC 20036-3307

EXAMINER

AVELLINO, JOSEPH E

ART UNIT	PAPER NUMBER
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2146

MAIL DATE	DELIVERY MODE
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07/11/2008

PAPER

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte RICHARD A. SMITH, STEVEN H. LEVINE,
and JOHANNA WILSON

Appeal 2008-0625
Application 09/785,438
Technology Center 2100

Decided: July 10, 2008

Before JEAN R. HOMERE, ST. JOHN COURTENAY III, and
STEPHEN C. SIU *Administrative Patent Judges*.

COURTENAY, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C. § 134(a) from the Examiner's rejection of claims 1-47. We have jurisdiction under 35 U.S.C. § 6(b). We AFFIRM.

THE INVENTION

The disclosed invention relates to individualized information management and delivery. More particularly, Appellants' invention relates to individual information detection and delivery for long distance carriers, Internet Service Providers (ISPs), and information content delivery services particularly in a wireless environment. (*See Spec. 1, ll. 5-9*).

Independent claim 1 is illustrative:

1. An individualized network information delivery system interposed between at least one data source and a destination device, comprising:

a data source interface module to interface with said at least one data source;

a user object module implementable as an individual thread to aggregate services for an individual end-user;

a data worker module to perform a given service for said user object module, said given service comprising automatically selectively retrieving data from said at least one data source;

a data event destination module to adaptively interface said selectively retrieved data to said destination device; and

a data forwarder to automatically selectively forward said data to said destination device.

wherein said individualized network information delivery system is adapted to be an event-driven architecture and said data worker module is adaptively abstract from said data source interface module.

THE REFERENCES

The Examiner relies upon the following references as evidence in support of the rejections:

Herz	US 6,029,195 B1	Feb. 22, 2000 (filed Dec. 5, 1997)
Reed	US 6,088,717	Jul. 11, 2000 (filed Aug. 31, 1998)
Macera	US 6,453,339	Feb. 6, 2002 (filed Sep. 30, 1992)
Hawkins	US 6,389,421 B1	May 14, 2002 (filed Aug. 4, 1998)
Katariya	US 2002/0091789 A1	Jul. 11, 2002 (filed Dec. 3, 1998)
Takahashi	US 6,442,589 B1	Aug. 27, 2002 (filed Jan. 14, 1999)
Schultz	US 6,453,339 B1	Sep. 17, 2002 (filed Jan. 20, 1999)
Daswani	US 6,477,565 B1	Nov. 5, 2002 (filed Sep. 16, 1999)
Zirngibl	US 6,606,596 B1	Aug. 12, 2003 (filed Dec. 7, 1999)

Brian Kantor et al., *Request for Comments: 977 Network Working Group*, (1986).

Mike McConnell, et al., *An Experimental 4-Mb Flash EEPROM with Sector Erase*, (1991).

XML, *The American Heritage Dictionary*, 4th Edition, (1991).

von-Bultzingsloewen et al., *Active Information Delivery in A COBRA-Based Distributed Information System*, (1996).

IBM, *A Process for Customized Information Delivery*, (1998).

T. Small, *Request for Comments*: 2739, Network Working Group, (2000).

THE REJECTIONS

1. Claims 1-5 and 39-47 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Schultz in view of Takahashi, Hawkins, and Katariya.

2. Claims 10 and 14 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Schultz in view of Takahashi, Hawkins, Katariya, and IBM.

3. Claims 6-9, 19, and 21 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Schultz in view of Takahashi, Hawkins, Katariya, and Herz.

4. Claims 11, 12, 15, and 16 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Schultz in view of Takahashi, Hawkins, Katariya, and XML.

5. Claim 13 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Schultz in view of Takahashi, Hawkins, Katariya, XML, and McConnell.

6. Claim 17 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Schultz in view of Takahashi, Hawkins, Katariya, Herz, and Kantor.

7. Claim 18 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Schultz in view of Takahashi, Hawkins, Katariya, and Small.

8. Claim 20 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Schultz in view of Takahashi, Hawkins, Katariya, and Macera.

9. Claim 22 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Schultz in view of Takahashi, Hawkins, Katariya, and Reed.

10. Claims 23-25 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Schultz in view of Takahashi, Hawkins, Katariya, Reed, and von-Bultzingsloewen.

11. Claims 26, 30, and 31 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Schultz in view of Takahashi, Hawkins, Katariya, and Zirngibl.

12. Claims 27 and 32 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Schultz in view of Takahashi, Hawkins, Katariya, Zirngibl, and Daswani.

13. Claims 28, 29, and 33-38 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Schultz in view of Takahashi, Hawkins, Katariya, Zirngibl, and von-Bultzingsloewen.

PRINCIPLES OF LAW

“What matters is the objective reach of the claim. If the claim extends to what is obvious, it is invalid under § 103.” *KSR Int’l Co. v. Teleflex, Inc.*, 127 S. Ct. 1727, 1742 (2007). To be nonobvious, an improvement must be “more than the predictable use of prior art elements according to their established functions.” *Id.* at 1740.

Appellants have the burden on appeal to the Board to demonstrate error in the Examiner’s position. *See In re Kahn*, 441 F.3d 977, 985-86 (Fed. Cir. 2006) (“On appeal to the Board, an applicant can overcome a rejection [under § 103] by showing insufficient evidence of *prima facie* obviousness or by rebutting the *prima facie* case with evidence of secondary indicia of nonobviousness.”) (quoting *In re Rouffet*, 149 F.3d 1350, 1355 (Fed. Cir. 1998)). Therefore, we look to Appellants’ Briefs to show error in the proffered *prima facie* case.

ANALYSIS

We decide the question of whether Appellants have shown the Examiner erred in holding that the cited references render obvious the claimed subject matter. More particularly, regarding the limitations recited in claims 1-47, we have determined that the following issue is dispositive in this appeal:

Whether Appellants have shown the Examiner erred in finding that the cited references teach and/or suggest a user object module implementable as an individual thread to aggregate services for an individual end-user, as claimed.

After reviewing the record before us, it is our view that Appellants have not sustained the requisite burden on appeal in providing arguments or evidence persuasive of error in the Examiner's rejection of claims 1-47, as discussed *infra*.

FINDINGS OF FACT

1. Katariya teaches aggregating data from a number of information providers, such as news services, weather services, stock services, and e-mail (see para. [0024]).
2. Katariya teaches that the computing system 102 tailors the information received from the selected information providers (para. [0025]).
3. Katariya teaches receiving requested data clips wherein a caching system is used to provide data clips (para. [0029]).
4. Katariya teaches that the caching system is based on a threading module (para. [0032]).

Claim Construction

“[T]he PTO gives claims their ‘broadest reasonable interpretation.’”
In re Bigio, 381 F.3d 1320, 1324 (Fed. Cir. 2004) (quoting *In re Hyatt*, 211 F.3d 1367, 1372 (Fed. Cir. 2000)).

At the outset, we broadly but reasonably construe the claimed “user object module implementable as an individual thread” as hardware or software that aggregates information from two or more information providers and further provides customized or tailored information to a user. We broadly but reasonably construe an individual “thread” as a single sequential flow of execution within the context of a process. Thus, any executing program has at least one thread or path of execution.

Claims 1-5 and 39

We consider the Examiner’s rejection of claims 1-5 and 39 as being unpatentable over Schultz, Takahashi and Hawkins in view of Katariya. Since Appellants’ arguments have treated these claims as a single group which stand or fall together, we select independent claim 1 as the representative claim for this rejection. See 37 C.F.R. § 41.37(c)(1)(vii).

Combinability under 35 U.S.C. § 103

Appellants contend that the need to combine four references is an indication of non-obviousness (App. Br. 7, § (7)(A)). We note that Appellants did not provide any further explanation or arguments in support of this contention.

As noted by the Examiner, Appellants’ mere assertion that four references are an indication of non-obviousness is insufficient to overcome the rejection. “The criterion, however, is not the number of references, but what they would have meant to a person of ordinary skill in the field of the invention.” *In re Gorman*, 933 F.2d 982, 986 (Fed. Cir. 1991). Accordingly, we conclude that Appellants have not shown the Examiner

erred in combining four references to form a basis for the obviousness rejection of representative claim 1.

Appellants further contend that one skilled in the art would not be motivated to modify Shultz with the teachings of Hawkins. (App. Br. 7, 4th para.). More specifically, Appellants contend there is a lack of motivation to modify Shultz with Hawkins because the result of the combination would be a plurality of processors, which are not relied upon in Appellants' claimed invention. To the contrary, it is our view that the Examiner has provided sufficient motivation for combining Schultz and Hawkins in that implementing a plurality of processors reduces the context switching needed to execute multiple threads on a single processor. (*See* Ans. 28 – 29 § (A.3)). We note that the broad language of representative claim 1 does not preclude the use of a plurality of processors. Moreover, Appellants expressly state that “Appellants’ claimed features . . . could be implemented with a plurality of processors.” (App. Br. 7-8). Thus, we find that the Examiner has provided a motivation that would have reasonably led an artisan to combine Schulz with Hawkins at the time of the invention. We have also determined *supra* that any executing program (such as that taught by Shultz) has at least one thread or path of execution.

Elements under 35 U.S.C. § 103

Appellants contend that the Examiner has ignored what the threads are used for. (App. Br. 7). However, we agree with the thrust of the Examiner's argument that the “implementable as an individual thread” portion of claim 1 does not positively recite a structural difference between the claimed

invention and the prior art. Therefore, we conclude that Appellants have not shown error on the part of the Examiner.

Appellants further contend that the prior art references fail to teach the element of a thread to aggregate services for an individual end-user (App. Br. 8, ll. 10-18). More specifically, Appellants contend that Katariya fails to cure the deficiencies of Shultz, Takahashi, and Hawkins because Katariya fails to teach a user object implementable as an individual thread to aggregate services for an individual user. To the contrary, we find that Katariya teaches a module (that could be implemented as an individual thread) that aggregates services for an individual end user (FF 1-2). As discussed above, we broadly but reasonably construe the claimed “individual thread” as a single sequential flow of execution within the context of a process. Under this construction, we again note that any executing program has at least one thread or path of execution. In accordance with this construction, we find that the scope of Appellants’ claimed “user module” broadly but reasonably encompasses a computing system as described in Katariya, that aggregates information from selectable information providers and provides tailored information to the user (*see* FF 1-2). Therefore, we find that the combination of cited references teaches and/or suggests “a user object module implementable as an individual thread to aggregate services for an individual user,” as claimed (claim 1).

Accordingly, we conclude that Appellants have not shown that the Examiner erred in determining that the cited combination of Shultz, Takahashi, Hawkins, and Katariya, teaches and/or suggests the claimed limitations of “a user object implementable as an individual thread to aggregate services for an individual end user” (claim 1).

Because Appellants have not shown error in the Examiner's prima facie case of obviousness, we sustain the Examiner's rejection of representative claim 1 as being unpatentable over Shultz in view of Takahashi, Hawkins, and Katariya.

Pursuant to our authority under 37 C.F.R. § 41.37(c)(1)(vii), we have decided the appeal with respect to the remaining claims in this group on the basis of the selected representative claim alone. Thus, we sustain the Examiner's rejection of claims 2-5, and 39 as being unpatentable over Shultz, Takahashi, Hawkins, and Katariya for the same reasons discussed *supra* with respect to representative claim 1.

Dependent claims 10 and 14

We consider next the Examiner's rejection of claims 10 and 14 as being unpatentable over Shultz, Takahashi, Hawkins, Katariya, and IBM. Since Appellants' arguments have treated these claims as a single group which stand or fall together, we select dependent claim 10 as the representative claim for this rejection. *See* 37 C.F.R. § 41.37(c)(1)(vii).

We note that Appellants' arguments regarding the non-obviousness of representative claim 10 are essentially similar to those previously made regarding claim 1, i.e., the need for five references is an indication of non-obviousness, and the cited references fail to teach a user object module implementable as an individual thread to aggregate services for an individual end-user (see App. Br. 10, § B). Appellants essentially contend that IBM fails to cure the deficiencies of Shultz, Takahashi, Hawkins, and Katariya as discussed regarding claim 1.

In response, we see no deficiencies with the Examiner's proffered combination of Shultz, Takahashi, Hawkins, and Katariya, as discussed above regarding the Examiner's rejection of claim 1.

Appellants contend that IBM "fails to disclose anything related to an individualized network information delivery system and anything remotely related to selective retrieval of the information." (App. Br. 10-11).

However, we note that the Appellants' contention is no more than an assertion regarding the preamble of claim 1. We have fully addressed the Examiner's rejection of claim 1 above. Appellants have not presented any arguments regarding the combinability of IBM with the Shultz, Takahashi, Hawkins, and Katariya references relied on by the Examiner.

Accordingly, we conclude that the arguments presented with respect to claim 1 apply equally to representative claim 10. We see no deficiencies regarding the Examiner's rejection of claim 1, as discussed *supra*. Because Appellants have not shown error in the Examiner's *prima facie* case, we sustain the Examiner's rejection of claim 10 (and claim 14 that falls therewith) as being unpatentable over Shultz, Takahashi, Hawkins, Katariya, and IBM for the same reasons discussed above regarding claim 1.

Dependent claims 6-9, 19, and 21

We consider next the Examiner's rejection of claims 6-9, 19, and 21 as being unpatentable over Shultz, Takahashi, Hawkins, Katariya, and Herz. Since Appellants' arguments have treated these claims as a single group which stand or fall together, we select dependent claim 6 as the representative claim for this rejection. *See* 37 C.F.R. § 41.37(c)(1)(vii).

We note again that Appellants' arguments regarding the non-obviousness of representative claim 6 are again essentially similar to those previously made regarding claim 1, i.e., the need for five references is an indication of non-obviousness, and the cited references fail to teach a user object module implementable as an individual thread to aggregate services for an individual end-user (see App. Br. 11, § C). Appellants essentially contend that Herz fails to cure the deficiencies of Shultz, Takahashi, Hawkins, and Katariya as previously discussed regarding claim 1.

In response, we see no deficiencies with the Examiner's proffered combination of Shultz, Takahashi, Hawkins, and Katariya, as discussed above regarding the Examiner's rejection of claim 1. Because Appellants have not shown error in the Examiner's *prima facie* case of obviousness, we sustain the Examiner's rejection of representative claim 6 (and claims 7-9, 19, and 21 that fall therewith) as being unpatentable over Shultz, Takahashi, Hawkins, Katariya and Herz for the same reasons discussed above regarding claim 1.

Claims 11, 12, 15, and 16

We consider next the Examiner's rejection of claims 11, 12, 15, and 16 as being unpatentable over Shultz, Takahashi, Hawkins, Katariya, and XML. Since Appellants' arguments have treated these claims as a single group which stand or fall together, we select dependent claim 11 as the representative claim for this rejection. *See* 37 C.F.R. § 41.37(c)(1)(vii).

We note again that Appellants' arguments regarding the non-obviousness of representative claim 11 are similar to those previously made regarding claim 1, i.e., the need for five references is an indication of non-

obviousness, and the cited references fail to teach a user object module implementable as an individual thread to aggregate services for an individual end-user (see App. Br. 12, § D). Appellants essentially contend that XML fails to cure the deficiencies of Shultz, Takahashi, Hawkins, and Katariya as discussed regarding claim 1.

In response, we see no deficiencies with the Examiner's proffered combination of Shultz, Takahashi, Hawkins, and Katariya, as discussed above regarding the Examiner's rejection of claim 1. Because Appellants have not shown error in the Examiner's prima facie case of obviousness, we sustain the Examiner's rejection of representative claim 11 (and claims 12, 15, and 16 that fall therewith) as being unpatentable over Shultz, Takahashi, Hawkins, Katariya and XML for the same reasons discussed above regarding claim 1.

Claims 13, 17, 18, 20, and 22

Regarding the Examiner's separate rejections of dependent claims 13, 17, 18, 20, and independent 22, Appellants repeat the previous pattern in arguing that the number of references applied by the Examiner indicates non-obviousness and also that the additional XML reference and McConnell reference (claim 13), Kantor reference (claim 17), Small reference (claim 18), Macera reference (claim 20), and Reed reference (claim 22), do not respectively overcome the alleged deficiencies of the base Shultz, Takahashi, Hawkins, and Katariya references.

In response, we see no deficiencies with the Examiner's proffered combination of Shultz, Takahashi, Hawkins, and Katariya, as discussed above regarding the Examiner's rejection of claim 1. Because Appellants have not shown error in the Examiner's prima facie case of obviousness, we

sustain the Examiner's respective rejections of dependent claims 13, 17, 18, 20, and independent claim 22. See the fifth through ninth stated rejections *supra*.

Dependent claims 23-25

We consider next the Examiner's rejection of claims 23-25 as being unpatentable over Shultz, Takahashi, Hawkins, Katariya, and Reed in view of von-Bulzingsloewen. Since Appellants' arguments have treated these claims as a single group which stand or fall together, we select dependent claim 23 as the representative claim for this rejection. See 37 C.F.R. § 41.37(c)(1)(vii).

We note again that Appellants' arguments regarding the non-obviousness of representative claim 23 are similar to those previously made regarding claim 1, i.e., the need for six references is an indication of non-obviousness, and the cited references fail to teach a user object module implementable as an individual thread to aggregate services for an individual end-user (see App. Br. 18, § J). Appellants essentially contend that von-Bulzingsloewen fails to cure the deficiencies of Shultz, Takahashi, Hawkins, Katariya, and Reed as discussed *supra*.

In response, we see no deficiencies regarding the Examiner's rejection of claim 1, as discussed *supra*. Because Appellants have not shown error in the Examiner's *prima facie* case, we sustain the Examiner's rejection of representative claim 23 (and claims 24-25 that fall therewith) as being unpatentable over Shultz, Takahashi, Hawkins, Katariya, Reed, and von-Bulzingsloewen for the same reasons discussed above regarding claim 1.

Independent claims 26, 30, and 31

We consider next the Examiner's rejection of independent claims 26, 30 and 31 as being unpatentable over Shultz, Takahashi, Hawkins, and Katariya, in view of Zirngibl. Since Appellants' arguments have treated these claims as a single group which stand or fall together, we select independent claim 30 as the representative claim for this rejection because it is the broadest claim in this group. *See* 37 C.F.R. § 41.37(c)(1)(vii).

We again note that Appellants' arguments regarding the non-obviousness of representative claim 26 are similar to those previously made regarding claim 1, i.e., the need for five references is an indication of non-obviousness, and the cited references fail to teach a user object module implementable as an individual thread to aggregate services for an individual end-user (see App. Br. 19-20, § K). Appellants essentially contend that Zirngibl fails to cure the deficiencies of Shultz, Takahashi, Hawkins, and Katariya, as discussed *supra*.

In response, we see no deficiencies regarding the Examiner's rejection of claim 1, as discussed *supra*. Because Appellants have not shown error in the Examiner's prima facie case, we sustain the Examiner's rejection of representative claim 26 (and claims 30 and 31 that fall therewith) as being unpatentable over Shultz, Takahashi, Hawkins, Katariya, and Zirngibl for the same reasons discussed above regarding claim 1.

Dependent claims 27 and 32

We consider next the Examiner's rejection of claims 27 and 32 as being unpatentable over Shultz, Takahashi, Hawkins, Katariya, and Zirngibl, in view of Daswani. Since Appellants' arguments have treated these claims

as a single group which stand or fall together, we select dependent claim 27 as the representative claim for this rejection. *See* 37 C.F.R.

§ 41.37(c)(1)(vii).

We note again that Appellants' arguments regarding the non-obviousness of representative claim 27 are similar to those made regarding claim 1, i.e., the need for six references is an indication of non-obviousness, and the cited references fail to teach a user object module implementable as an individual thread to aggregate services for an individual end-user (see App. Br. 19-20, § L). Appellants essentially contend that Daswani fails to cure the deficiencies of Shultz, Takahashi, Hawkins, Katariya, and Zirngibl as discussed *supra*.

In response, we see no deficiencies regarding the Examiner's rejection of claim 1, as discussed *supra*. Because Appellants have not shown error in the Examiner's *prima facie* case, we sustain the Examiner's rejection of representative claim 27 (and claim 32 that falls therewith) as being unpatentable over Shultz, Takahashi, Hawkins, Katariya, Zirngibl, and Daswani for the same reasons discussed above regarding claim 1.

Claims 28, 29, and 33-38

We consider next the Examiner's rejection of claims 28, 29, and 33-38 as being unpatentable over Shultz, Takahashi, Hawkins, Katariya, and Zirngibl, in view of von-Bultzingsloewen. Since Appellants' arguments have treated these claims as a single group which stand or fall together, we select independent claim 37 as the representative claim for this rejection because it is the broadest claim in this group. *See* 37 C.F.R.

§ 41.37(c)(1)(vii).

We note again that Appellants' arguments regarding the non-obviousness of representative claim 37 are similar to those previously made regarding claim 1, i.e., the need for six references is an indication of non-obviousness, and the cited references fail to teach a user object module implementable as an individual thread to aggregate services for an individual end-user (see App. Br. 21, § M). Appellants essentially contend that von-Bultzingsloewen fails to cure the deficiencies of Shultz, Takahashi, Hawkins, Katariya, and Zirngibl as discussed *supra*.

In response, we see no deficiencies regarding the Examiner's rejection of claim 1, as discussed *supra*. Because Appellants have not shown error in the Examiner's prima facie case, we sustain the Examiner's rejection of representative claim 37 (and claims 28, 29, 33-36, and 38 that fall therewith) as being unpatentable over Shultz, Takahashi, Hawkins, Katariya, Zirngibl, and von-Bultzingsloewen for the same reasons discussed above regarding claim 1.

Dependent claims 40-47

We sustain the Examiner's rejection of dependent claims 40-47 on the basis of our discussion of claims 1-5 and 39 *supra*.

CONCLUSION OF LAW

Based on the findings of facts and analysis above, we conclude that Appellants have not shown the Examiner erred in rejecting claims 1-47 under 35 U.S.C. § 103(a) for obviousness.

Appeal 2008-0625
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DECISION

The decision of the Examiner rejecting claims 1-47 is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED

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